

REPUBLIC OF TRINIDAD AND TOBAGO:

IN THE HIGH COURT OF JUSTICE

No.1150 of 2004

BETWEEN

SAM MAHARAJ

PLAINTIFF

AND

**THE ATTORNEY GENERAL
OF THE TRINIDAD AND TOBAGO**

DEFENDANT

Before: Madam Justice Dean-Armorer

APPEARANCES:

R.L.Maharaj, S.C. and Mr. Rikki Harananan, instructed by
Mr. Darrel Allahar for the Plaintiff

Mr. Elton Prescott for the Defendant.

Introduction

By an originating summons dated the 23rd April, 2004 and filed herein on the 28th April, 2004 the Plaintiff sought the Court's determination of the following questions:

- (a) Whether the effective date of appointment of the Plaintiff as a member of the Industrial Court was in the absence of words to the contrary, contained in the instrument of appointment of appointment under the hand of the President of the Republic of Trinidad and Tobago appointing the Plaintiff a member of the Industrial Court, the date of the said instrument of appointment or the date*

*upon which the Plaintiff assumed duty as a member of the Industrial Court;
and*

*(b) Whether in the circumstances where the Plaintiff's instrument of appointment was dated 17th November, 2000 the Plaintiff held office as a member of the Industrial Court prior to the date of **Minister of Finance, Planning and Development No. 7 Circular No. 7 of 2000 Reference PD(R)77/1/2** (which discontinued the payment of an entertainment allowance as a condition of service of Members of the Industrial court, save and except in respect of Members who held office prior to the date of the Circular, being 29th November, 2000) and was accordingly entitled to be paid a monthly entertainment of \$250.00 (later increased to \$300.00) as term of his service.*

Relief

The Plaintiff has sought the following relief:

- i. A declaration that the effective date for appointment of the plaintiff as a member of the Industrial Court was the date of the instrument of appointment under the hand of His Excellency the President of the Republic of Trinidad and Tobago, namely the 17th day of November, 2000 and not the date on which the plaintiff assumed duty as a member of the Industrial Court, namely the 29th November, 2000;
- ii. A declaration that the plaintiff held office as a Member of the Industrial Court prior to the 29th day of November 2000 the date of **Minister of Finance, Planning and Development Circular No. 7 of 2000 Reference PD(R)77/1/2;**

- iii. A declaration that the plaintiff was entitled to be paid a monthly entertainment allowance from the 17th day of November 2000 until he ceased to hold office as a member of the Industrial Court on the 16th day of February, 2004;
- iv. A declaration that the non-payment by the State to the plaintiff of the entertainment allowance to which the plaintiff was entitled amounted to an alteration to his disadvantage of a term of service of the plaintiff after appointment contrary to section 5(3) of the *Industrial Relations Act*, Chapter 88:01 and was accordingly illegal and unlawful;
- v. A declaration that the non-payment by the State to the plaintiff of the entertainment allowance to which the plaintiff was entitled contravened the plaintiff's right to the enjoyment of property and not to be deprived thereof except by due process of law as guaranteed to him by section 4(a) of the Constitution and was discriminatory and amounted to inequality of treatment and contravened the plaintiff's rights under section 4(d) and 4(b) of the Constitution;
- vi. An order that the defendant do pay the plaintiff the sum of \$13,800.00.
- vii. An order that the defendant do pay the plaintiff damages including exemplary damages for breach of the plaintiff's rights under section 4(a), 4(b) and 4(d) of the Constitution, to be assessed by a Judge in Chambers;

viii. Costs;

ix. Such further and/or other relief as the Court may deem fit.

FACTS:

1. The facts of this matters are not in dispute and are to be found in the two affidavits before the Court:
 - a. The affidavit of the Plaintiff filed and sworn on 28th day of April 2004, and;
 - b. The Affidavit which was sworn by Noel Innis and filed herein on behalf of the Defendant on the 30th day of July 2004.
2. By instrument dated the 17th day of November 2003, His Excellency the Acting President of Trinidad and Tobago appointed the Plaintiff a member of the Industrial Court.
3. The Plaintiff became aware of his appointment on the 28th day of November 2000 and assumed duties as a member of the Industrial Court on the 29th November 2000.
4. By *Minister of Finance, Planning and Development Circular No. 7* of 2000 dated the 29th day of November from the Minister of Finance, Planning and Development to “*All Permanent Secretaries, Heads of Departments etc.*”, the Minister of Finance indicated

that the entertainment allowance of \$250.00 per month payable to members of the Industrial Court would be discontinued.

5. The Plaintiff, by his affidavit, testified that he never received the allowance but deposed that all members of the Industrial Court who held office prior to the 29th day of November have continued to receive the allowance. No challenge was mounted on the ground of hearsay.
6. In response to inquires by the Plaintiff, the Registrar of the Industrial Court wrote to the Plaintiff by memo dated the 15th day of January 2004.
7. It is useful to extract the following paragraph from the memo of the Registrar:

“It is an undisputed fact that any appointment of a member of the Court prior to the date of the Circular (29/11/00) would mean that he or she is entitled to be paid the monthly entertainment allowance.

However our records reveal that the date of your instrument of appointment is dated the 17th day of November 2000, but the date you assumed office was on the 29th day of November 2000”:

8. Mr. Noel Innis evidently regarded the date of the Plaintiff’s assumption of duty as the critical date.
9. Mr. Innis, deponent for the Defendant Attorney General, then provided the Court with information as to the process utilized in the appointment of a member of the Industrial

Court at paragraph 6 of his affidavit. Mr. Innis deposed that the process may extend over “a number of days” as the Instrument of Appointment travels from His Excellency, the President, to the office of the Attorney General, then to the President of the Industrial Court and ultimately to the appointed member.

10. Amazingly, Mr. Innis deposes at paragraph 7 that upon receiving the instrument of appointment, it is open to the member to take up appointment and assume office at a date “convenient” to him

11. Having regard to the process described, Mr. Innis makes the inference set out at paragraph 8 of his affidavit, that is to say:

“The effective date of assumption of office is therefore the date which the member indicates to the President of the Industrial Court..... is convenient for the assumption of duties and not the date on which the instrument is signed.....”

Law and Submissions

1. Both parties filed skeleton arguments, which they supplemented with oral submissions.
2. It was agreed between the parties that the single issue for the court’s determination is whether a member of the Industrial Court holds office from the date specified in the instrument of appointment or whether he holds office from his date of assumption of duties.

3. In their skeleton submissions, learned Attorneys at Law for the Plaintiff referred and relied on paragraph 1489, 12, *Halsbury's Laws of England* (4th ed.) in support of their submissions that a written instrument takes effect from the date of its execution.
4. The Plaintiff submitted further that no process utilized by the Industrial Court can derogate from the appointment by His Excellency in the exercise of his statutory power.
5. Learned Attorney at Law for the Plaintiff submitted that he effectively held office on the date of the instrument by which he was appointed
6. Learned Attorneys-at-Law submitted further that the omission of the Defendant to pay to the Plaintiff his entertainment allowance, was in breach of the provisions of the *Industrial Relations Act* and the *Constitution*.
7. In the course of his oral submissions, Mr. Maharaj, S.C. learned Senior Counsel for the Plaintiff submitted that s.42 of the *Interpretation Act* did not affect the Defendant, in that it did not expound a general principle of law, but dealt only with a prospective situation.
8. Learned Senior Counsel, Mr. Maharaj referred to the Privy Council decision in *Miller vs. Dickson* and submitted that it was of no consequence that the Plaintiff was not a Judge of the Supreme court, that the office of a member of the Industrial Court, in the spectrum of judicial offices, is placed close to the Supreme Court of Judicature.
9. Learned Senior Counsel relied on the case of *Rv. Secretary of State for the Home Department Exp. Saleem [2000] 4 ALLER* in submitting that there is a requirement for judicial tribunals to be independent.

10. Learned Senior Counsel referred to *Bernadette Hood-Caesar v. AG* HCA # 3015/87 in support of his argument that the entitlement of public servants amount to property, for the purpose of s. 4 of the *Constitution*. Learned Counsel for the defendant offered no argument in answer to this submission.

11. Mr. Prescott, learned Counsel for the Defendant, in both his oral and written submissions agreed with Mr. Maharaj, S.C. that the issue in this matter was limited.

12. Learned Counsel submitted that it was necessary to consider the language of this Act.

13. Learned Counsel reminded the Court that the President acts on the advice of Cabinet and referring to ss.4(3) and 4(8) of the *Act*, learned Counsel submitted that the President had two powers, under the *Industrial Relations Act*, that is:

- i. To indicate the division to which the appointee is assigned and
- ii. To determine the period during which the appointee should sent

Learned Counsel submitted that the President had no other power.

14. Learned Counsel submitted further that the date from which a member should hold office was different from the date of his appointment and that the date of execution of the instrument of appointment was the first day from which the member may take up his functions.

15. Learned Counsel continued to submit that there was a distinction between a member holding office and a member being appointed.

16. Learned Counsel, referred to s.4(3) (c) and s.5(1), *Industrial Relations Act* and submitted, that legislative provisions which addressed tenure employed the term “ *hold office*” and that this meant commencing to do the work.

17. Learned Counsel reiterated that the President was not empowered to determine the date of holding office and that such date fell to be determined by someone else.

18. Learned Counsel relied on s.42 of the *Interpretation Act*, which provides as follows :

“An appointment (however described or designated) under a written law may be made to have effect retrospectively from the date upon which the person appointed in fact first performed any of the functions of his appointment.”

19. Relevant provisions of the *Industrial Relations Act* are set out hereunder

- S. 4, (3) *“The Court shall consist of the following members:*

- a) *A President of the Court who shall be-*

- i. *a Judge of the Supreme Court of Judicature designated, with his consent, by the President of Trinidad and Tobago after consultation with the Chief Justice; or*

- ii. *a person who has the qualification (age excepted) to be appointed a Judge of the Supreme Court of Judicature and is appointed by the President of Trinidad and Tobago after consultation with the Chief Justice,.....”*

- S. 4, (8) *“A member of the Court appointed, other than under subsection (3)(a)(i), may be removed from office during his term of office only for inability to perform the function of his office (whether arising from infirmity of mind or body or any other cause or for misbehaviour), but shall not be removed except in accordance with section 106 of the Constitution.*

- S. 5, (3) *The salary and allowances payable to a member of the Court appointed, other than under section 4(3)(a)(i), and the other terms of service shall not be altered to his disadvantage after his appointment, and, for the purposes of this subsection, in so far as the terms of service of any person depend upon the option of that person, the terms for which he opts shall be taken to be more advantageous to him than any other terms for which he might have opted.*

Reasoning and Decision

1. The primary issue, which arises for my determination, is whether the effective date of the Plaintiff's appointment was the date of the Presidential Instrument of his appointment.
2. This is critical because of the provisions of section 5(3) of the *Industrial Court Act* protects a member of the Industrial Court from alteration of his terms and conditions to his disadvantage after his appointment.
3. In the instant case, there had been a governmental decision to discontinue the entertainment allowance from the 29th day of November 2000.
4. It has been accepted by the Defendant and had clearly been accepted by the Registrar of the Industrial Court in his memorandum of the 15th day of January 2004, that pursuant to s.5(3) of the *Industrial Relations Act*, persons who had held office prior to the 29th day of November 2000 would continue to receive the entertainment allowances.
5. In my view, the solution to the instant matter lies in focusing on the meaning of the *Industrial Relations Act*, s.5 (3) rather than on the internal practices of the Industrial Court.
6. The critical date in s. 5(3) is the date of his appointment. There should be no alteration of his terms and conditions to his disadvantage "*after his appointment*".

7. This leads me to the question of whether “*after his appointment*” means after the instrument of appointment has been executed by His Excellency by virtue of s. 4(3)(c) of the Act. Alternatively, I must consider whether “*after his appointment*” means after he assumed duties.

8. The rules of statutory interpretation require the application of the literal rule of interpretation in the absence of ambiguity.

The literal rule requires the words be given their plain meaning, *see Maxwell on the Interpretation of Statutes (12THED)* and that a statute be read as a whole. The proper interpretation of s.5(3) becomes apparent when read in the light of s.4(3)(c), which confers power on the President to make the appointment and s.5(1) which provides for the period during which appointed members shall hold office.

9. Section 5(1) refers to the terms of the Instrument of Appointment for the purpose of determining the period during which the appointed member should hold office. The members so appointed, “*shall hold office for such period as is specified in their respective instruments of appointment*”.

10. The operative of the Instrument of Appointment states:

“Now therefore I, Ganace Ramdial, Acting Presidentdo hereby appoint you, SAM MAHARAJ a member of the Industrial Court and do indicate that your said appointment is made to the General Services Division for a period of 3 years”

11. The Instrument of Appointment is silent as to the date from which the three year period should run and it is implied that time would run from the date of the appointment.
12. In the Instrument, the then Acting President uses the present tense and it is clear that the appointment was being made by the Instrument of Appointment, which took effect on the date of its execution, See 12, *Halsburys Laws of England* (4thed) paragraph 1489. Accordingly, I hold that the effective date of the Plaintiff's appointment was the date of the execution of the Instrument of Appointment i.e. the 17th day of November 2000.
13. The clear consequence of this finding is that the Plaintiff had been entitled to receive the entertainment allowance from the 17th day of November 2000 and that by virtue of s.5(3), the entertainment allowance could not be taken away from him after this date.
14. It is evident, from the affidavit of Noel Innis, that certain administrative practices have developed in the Industrial Court, where the date of "assumption of office" is the critical date.
15. In this way, the practices have departed from the emphasis of s.5(3) on the date of the appointment. It need not be stated that administrative practices have no force of law and must bow to unequivocal provisions of an Act of Parliament.
16. I respectfully disagree with learned Counsel, Mr. Prescott, that the powers of the President are restricted to determining the division to which the member would be

assigned and the period during which he should hold office and that the date from which he should hold office should be determined by someone else.

17. Section 4(3) of the Act empowers the President to appoint a person to hold office. The exercise of this power has the effect of investing in the appointee all the rights and obligations and powers which are attached to the office.

18. I also respectfully disagree with learned attorney that s.42 of the *Interpretation Act* is relevant to this case. Section 42 enables persons with power to appoint to make retrospective appointments. In my view s.42 is irrelevant to the instant case.

19. I therefore hold as follows:

- i. The effective date of appointment of the Plaintiff was the date of the Instrument of Appointment.
- ii. The Plaintiff was entitled to receive a monthly entertainment allowance from the 17th day of November 2000 until he ceased to hold office on the 16th day of February 2004.
- iii. The allowance which had been due to the Plaintiff since November, 2000 was his property for the purpose of s. 4(a) of the *Constitution*. The decision of the agents of the State to withhold such payments was therefore in breach of the Plaintiff's fundamental right to the enjoyment of property and the right not to be deprived thereof except by due process of law under s.4(a) of the *Constitution*.
- iv. I respectfully disagree with learned Senior Counsel, Mr. Maharaj that the Plaintiff is entitled to recover exemplary damages. The issue of an award

of exemplary damages in relation to a contravention of fundamental rights was considered by the Judicial Committee of the Privy Council in P.C.#13 of 2004 *A.G. v. Ramanoop*. In this authority their Lordships effectively upheld the decision of the Court of Appeal on the issue of exemplary damages. Their Lordships expressed the view that the expressions “*punitive damages*” and “*exemplary damages*” were better avoided . However their Lordships ruled that s. 14 was “*apt to encompass an additional award if the Court considers that it is required in all the circumstances...*”. See paragraph 19 of the decision of Lord Nicholls of Birkenhead. His Lordship expounded on the purpose of such additional award at paragraph 19:

“An additional award ...may be needed to reflect the sense of public outrage, emphasize the importance of the constitutional right and the gravity of the breach and deter further breaches...”

- v. In my view the breach in the instant case was the direct consequence of an error of interpretation of the statutory provision. The element of oppressive, high-handed conduct, which was so patent in *A.G. v. Ramanoop* is lacking in this case.
- vi. Accordingly, the Plaintiff is entitled to recover the sums due to him with interest from dates on which the sums payable became due.

ORDERS :

In my view, the Plaintiff is entitled to the following relief which he claimed in his Originating Summons:

1. A declaration that the effective date for appointment of the plaintiff as a member of the Industrial Court was the date of the instrument of appointment under the hand of His Excellency the President of the Republic of Trinidad and Tobago, namely the 17th day of November, 2000 and not the date on which the plaintiff assumed duty as a member of the Industrial Court, namely the 29th November, 2000;
2. A declaration that the plaintiff held office as a Member of the Industrial Court prior to the 29th day of November 2000 the date of **Minister of Finance, Planning and Development Circular No. 7 of 2000 Reference PD(R)77/1/2.**
3. A declaration that the plaintiff was entitled to be paid a monthly entertainment allowance from the 17th day of November 2000 until he ceased to hold office as a member of the Industrial Court on the 16th day of February, 2004.
4. A declaration that the non-payment by the State to the plaintiff of the entertainment allowance to which the plaintiff was entitled amounted to an alteration to his disadvantage of a term of service of the plaintiff after appointment contrary to section 5(3) of the ***Industrial Relations Act***, Chapter 88:01 and was accordingly illegal and unlawful;

5. A declaration that the non-payment by the State to the plaintiff of the entertainment allowance to which the plaintiff was entitled contravened the plaintiff's right to the enjoyment of property and not to be deprived thereof except by due process of law as guaranteed to him by section 4(a) of the Constitution.
6. The defendant to pay the plaintiff the sum of \$13,800.00.
7. The Defendant to pay to the Plaintiff the costs of the action herein fit for Senior and Junior Counsel.

Dated this 8th day of July, 2005

Mira Dean Armor
Judge